

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 09, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERIC TOWNSEL,

Plaintiff,

v.

KENNETH SAWYER, DAVID
KENNEY, SANDRA THOMPSON,
CHAD HARBOUR, JACKIE SHUEY,
JAMES EDWARDS, JO PHILLIPS,
KEN MOORE, DONALD
HOLBROOK, STEVEN SUNDBERG,
TANNER MINK, STACY
THOMPSON, AUSTIN FRANK,
JAMES FUNNEMARK, JEREMY
GARBERG, ALICIA SANCHEZ,
FRANK RIVERA, CAROL SMITH, H.
ALIJAGIC, D. MCINTYRE, M.
JACKSON, and K. DUBROOK,
Defendants.

No. 2:23-cv-00224-SAB

**ORDER DENYING AS MOOT
REQUEST TO EXPEDITE
PENDING MOTIONS AND TO
AMEND COMPLAINT; DENYING
MOTION TO APPOINT
COUNSEL; DENYING MOTIONS
FOR PRELIMINARY
INJUNCTIONS; DENYING
MOTIONS FOR ORAL
ARGUMENT; DENYING MOTION
FOR RECONSIDERATION;
GRANTING MOTION FOR
EXTENSION OF TIME TO FILE
FIRST AMENDED COMPLAINT
OR TO VOLUNTARILY DISMISS
ECF NOS. 7–16**

**ORDER DENYING AS MOOT REQUEST TO EXPEDITE PENDING
MOTIONS AND TO AMEND COMPLAINT . . . # 1**

BEFORE THE COURT are Plaintiff Eric Townsel's Letter to the Court, ECF No. 7, Motion to Appoint Counsel, ECF No. 8, Motions for Preliminary Injunctions against Clallam Bay Corrections Center ("CBCC"), Washington State Department of Corrections ("DOC"), Washington State Attorney General's Office ("AGO"), the CBCC Law Librarian, Washington State DOC's Public Records Office, and Washington State Office of Corrections ("OCO") Ombuds, ECF Nos. 9–12. Also before the Court are Plaintiff's Motions for Oral Argument, ECF Nos. 13–14, Motion for Reconsideration of the Court's Order to Amend or Voluntarily Dismiss Complaint ("Order to Amend"), ECF No. 15, and Motion for an Extension of Time to File a First Amended Complaint or Voluntarily Dismiss, ECF No. 16. Plaintiff's Motions were considered without oral argument on the date signed below.

By Order filed September 21, 2023, the Court advised Plaintiff, a prisoner currently housed at CBCC, of the deficiencies of his civil rights complaint pursuant to 42 U.S.C. § 1983 and directed him to amend or voluntarily dismiss within sixty days. ECF No. 6. Plaintiff seeks injunctive relief and \$150,000,000.00 in monetary damages, claiming that he received inadequate medical care related to two hip replacement surgeries. ECF No. 1 at 75–76. Plaintiff is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

LETTER TO THE COURT

On September 21, 2023, Plaintiff filed a letter with the Court, which was dated August 21, 2023. ECF No. 7. Plaintiff titled the letter, "1. Plaintiff's Amendment to Preliminary Injunction Motion Against CBCC, DOC and AGO, for Use of Harassment/Retaliation Upon Plaintiff for Filing this Civil Suit[;] 2. Plaintiff's Motion for Emergency Restraining Order Against Defendants[; and] 3. Plaintiff's Motion to []Amend Complaint and Add Ninth Count and Waiver of Exhaustion of Remedies as Remedies Either Exhausted or Unexhaustible." *Id.* at 1.

In his letter, Plaintiff asserts that he is a defendant in a criminal case in the

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1 Walla Walla County Superior Court. ECF No. 7 at 2. He states that a virtual
2 hearing was scheduled to be held in his superior court case on August 10, 2023 at
3 CBCC. *Id.* He claims that Corrections Officer Frees, who is the CBCC property
4 room officer and is not named as a Defendant to this action, told Plaintiff that he
5 had to pack to transfer to segregation at the Washington State Penitentiary
6 (“WSP”) “for court.” *Id.* Plaintiff asserts that he told Officer Frees that this was
7 incorrect and after Officer Frees rechecked his records, he found that Plaintiff was
8 correct. *Id.*

9 Plaintiff states that on August 10, 2023, during a virtual hearing in his
10 superior court case, another virtual hearing was set for August 15, 2023. ECF No.
11 7 at 2. He claims that the CBCC Legal Liaison, Mr. Pearson, who is not named as a
12 Defendant to this action, later contacted Plaintiff to tell him that the virtual hearing
13 had been rescheduled for August 17, 2023. *Id.*

14 Plaintiff argues that he was again called to the CBCC property room by
15 Officer Frees who told Plaintiff that he was scheduled for transfer to WSP
16 segregation for a “trial.” ECF No. 7 at 2. Plaintiff contends that he knew the trial
17 was in error because no jury had been impaneled, and he informed Officer Frees,
18 Mr. Pearson, and his Unit Counselor, Ms. McCann, who is not named as a
19 Defendant to this action, of this error. *Id.* He claims that they advised Plaintiff not
20 to go, and that on August 15, 2023, Plaintiff’s court-appointed counsel told
21 Plaintiff that he did not have an in person court hearing. *Id.* However, Plaintiff
22 argues that on August 16, 2023, an unidentified second shift sergeant, along with
23 Corrections Officers Tyler and Stacey, none of whom are named as Defendants to
24 this action, came to Plaintiff’s cell and ordered him to go. *Id.* Plaintiff asserts that
25 he refused to pack. *Id.*

26 Plaintiff claims that later the same day, Lieutenant Weeks, Sergeant Halvert,
27 and the same three officers listed above, along with another four guards and a
28 counselor, none of whom are named as Defendants to this action, put Plaintiff in

1 handcuffs, told him that they were authorized to use pepper spray and force to send
2 him to WSP segregation for “Trial[.]” ECF No. 7 at 2. He alleges that they told
3 Plaintiff that Lieutenant Weeks “had personally talked to ‘The Secretary’ of DOC
4 (?), or Records (?), and was told that they had spoken to The ‘Prosecutor’” and was
5 told that Plaintiff had to be sent or they would be in contempt of court. *Id.* at 2–3.
6 Plaintiff claims that he explained to Sergeant Halvert and Lieutenant Weeks that
7 there was no trial and instead he had a virtual hearing scheduled for the next day,
8 August 17, 2023, but they refused to listen and Mr. Pearson said they would “send
9 [Plaintiff’s] virtual hearing with [him] to WSP[.]” *Id.* at 3.

10 Plaintiff contends that he was transferred by special transport from CBCC to
11 segregation at the Washington Corrections Center (“WCC”). ECF No. 7 at 3. He
12 claims that on August 17, 2023, the day of his virtual hearing, he was sent on a
13 twelve-hour bus ride from WCC to WSP and once at WSP, he was placed in
14 segregation/Intensive Management Unit (“IMU”)-South. *Id.* He asserts that he
15 went to Walla Walla Superior Court on August 22, 2023 and was told by the state
16 court judge that he had missed his virtual hearing on August 17, 2023. *Id.* He
17 claims that there was no trial and when he asked the prosecutor if he had demanded
18 that Plaintiff be transferred for trial, the prosecutor denied speaking to anyone from
19 CBCC or Washington State DOC. *Id.*

20 Plaintiff claims that he learned that CBCC staff had been looking at an
21 invalid order to produce Plaintiff with a trial date of August 22, 2023. ECF No. 7 at
22 3. He argues that CBCC staff should have called the court clerk to verify that the
23 order was valid, but instead they lied about talking to the prosecutor. *Id.* Plaintiff
24 contends that their actions delayed his actual state court proceedings and caused
25 him to have to sit on the bus for seventeen hours and be held in segregation from
26 August 16, 2023 through September 6, 2023, when he was finally returned to
27 CBCC. *Id.*

28 Plaintiff claims that during his stay at WSP, he was denied an opportunity to

1 be present at his own administrative segregation hearing by his hearing officer, Mr.
2 Fisbeck, who is not named as a Defendant to this action. ECF No. 7 at 4. Plaintiff
3 argues that Mr. Fisbeck has refused to speak with him or answer his kites. *Id.*

4 In his letter to the Court, Plaintiff seeks to expedite all of the pending
5 motions in this case. ECF No. 7 at 4. Plaintiff's request is **DENIED as moot**, as
6 this Order addresses all of his currently pending motions. He also asks for the
7 opportunity to amend his complaint to include the events described in his letter,
8 and to potentially add defendants. *Id.* This request is also **DENIED as moot**
9 because on the same day that Plaintiff filed this letter, the Court issued its Order to
10 Amend, ECF No. 6, giving Plaintiff the opportunity to amend his complaint.

11 **MOTION TO APPOINT COUNSEL**

12 On September 21, 2023, Plaintiff filed a Motion to Appoint Counsel. ECF
13 No. 8. He states that he is requesting the appointment of counsel because this case
14 is brought in good faith and has merit, the constitutional deprivation of his civil
15 rights spans more than 18 years and involves complex medical care issues that will
16 be difficult for Plaintiff to address alone, there are more than eight counts asserted
17 in the complaint against thirty defendants, and Plaintiff has been unable to secure
18 legal counsel despite contacting more than twelve law firms. *Id.*

19 This Court can designate counsel under 28 U.S.C. §1915(e)(1) only under
20 exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.
21 2009) (setting forth standard of review and requirement of “exceptional
22 circumstances” for appointment of counsel). Determining whether exceptional
23 circumstances exist requires evaluating “the likelihood of success on the merits”
24 and Plaintiff's ability “to articulate his claims *pro se* in light of the complexity of
25 the legal issues involved.” *Id.* (citation omitted).

26 In the Court's Order to Amend, filed on September 21, 2023, the Court
27 advised Plaintiff of the deficiencies in his Complaint. ECF No. 6. Plaintiff filed
28 this Motion to Appoint Counsel the same day. ECF No. 8. There is nothing

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1 particularly complex about the factual and legal issues he should present in a first
2 amended complaint. Further, in Plaintiff's Motion for Extension of Time to File
3 First Amended Complaint or Voluntary Dismissal, ECF No. 16, filed on October
4 11, 2023, Plaintiff states that he has secured the assistance of attorneys who will
5 help draft his First Amended Complaint but they need time to review the docket.
6 Therefore, Plaintiff's Motion to Appoint Counsel, ECF No. 8, is **DENIED**.

7 **INJUNCTIVE RELIEF**

8 On September 21, 2023, Plaintiff filed four separate Motions for Preliminary
9 Injunctions. ECF Nos. 9–12. He seeks a preliminary injunction against CBCC,
10 Washington State DOC, and Washington State AGO, asking the Court to order that
11 they refrain from retaliating against and harassing Plaintiff for filing this civil
12 action. ECF No. 9 at 1. Plaintiff also asks this Court to order the DOC and the
13 AGO not to transfer him out of state during and/or after these proceedings as
14 another means of retaliation. *Id.* at 2. Plaintiff contends that the DOC and AGO
15 have: (1) denied timely and proper medical care; (2) refused to address grievances
16 with honesty and integrity; (3) withheld or refused to send out personal and legal
17 mail; (4) transferred Plaintiff without justification or a hearing after demotion of
18 custody; (5) used physical torture against Plaintiff; (6) placed Plaintiff in a
19 segregation unit and confiscated legal paperwork; and (7) contacted Plaintiff's
20 relatives and associates for purposes of disrupting those relationships and using
21 non-parties against Plaintiff. *Id.* at 1–2.

22 Plaintiff also seeks a preliminary injunction against CBCC Law Librarian,
23 Mr. Erickson, who is not named as a Defendant to this action. ECF No. 10 at 1. He
24 asks the Court to order Mr. Erickson to refrain from copying Plaintiff's electronic
25 filings to this Court and releasing the copies to prison staff in violation of Federal
26 Rule of Civil Procedure ("FRCP") 5.2 and Plaintiff's Health Insurance Portability
27 and Accountability Act ("HIPAA") rights. *Id.* Plaintiff claims that Mr. Erickson's
28 scanning machine, which is used to scan documents to the Court, is also used as a

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1 copy machine that retains images which Mr. Erickson then releases to CBCC staff.
2 *Id.* Plaintiff contends this promotes retaliatory conduct against Plaintiff from
3 CBCC and Washington State DOC staff. *Id.*

4 Plaintiff also seeks a preliminary injunction against the DOC Public Records
5 Unit. ECF No. 11 at 1. He claims that the DOC Public Records Unit has in its
6 possession records pertaining to this case that Plaintiff requested on May 18, 2021.
7 *Id.* He argues that the DOC Public Records Unit has failed to produce these records
8 in their entirety, and has sent Plaintiff the same records twice and charged him. *Id.*

9 Plaintiff seeks a preliminary injunction against the OCO Ombuds, asking the
10 Court to order it to release all documents and files involving Plaintiff's medical
11 information and grievances related to this action. ECF No. 12 at 1. Plaintiff asserts
12 that over a period of five years, the OCO has compiled records and complaints
13 filed by Plaintiff against the Washington State DOC and its facilities regarding
14 poor medical treatment and care at CBCC, WSP, and Airway Heights Corrections
15 Center ("AHCC"). *Id.* He claims that in recent months, the OCO has demonstrated
16 its unwillingness and reluctance to turn over these documents to Plaintiff. *Id.*

17 "A preliminary injunction is an extraordinary remedy never awarded as of
18 right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A plaintiff
19 seeking a preliminary injunction must establish that he is likely to succeed on the
20 merits, that he is likely to suffer irreparable harm in the absence of preliminary
21 relief, that the balance of equities tips in his favor, and that an injunction is in the
22 public interest." *Id.* at 20. The elements of the test are "balanced, so that a stronger
23 showing of one element may offset a weaker showing of another." *All. for the Wild*
24 *Rockies v. Cottrell*, 632 F. 3d. 1127, 1131 (9th Cir. 2011) ("For example, a
25 stronger showing of irreparable harm to plaintiff might offset a lesser showing of
26 likelihood of success on the merits.").

27 Plaintiff's requests for injunctive relief are premature as the Court has not
28 yet determined that he has filed a legally sufficient complaint as to every claim

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1 asserted. Moreover, Plaintiff has made no showing that he is likely to suffer
2 irreparable harm in the absence of preliminary relief. He realleges many of his
3 claims from his complaint. Other than conclusory assertions, Plaintiff has made no
4 showing that he is in danger of being subjected to anything in violation of his
5 federally protected rights, which would warrant the extraordinary remedy of a
6 preliminary injunction at this time. *See* 18 U.S.C. § 3626(a)(1)–(2). Therefore,
7 Plaintiff’s Motions for Preliminary Injunctions, ECF Nos. 9–12, are **DENIED**.

8 Moreover, Plaintiff asks the Court to direct the OCO to release all non-
9 privileged materials it has in its possession regarding Plaintiff’s complaints
10 concerning medical care and DOC’s denial of timely grievance responses. ECF
11 No. 12 at 1. The OCO is not a Defendant to this action and the Court cannot direct
12 the actions of non-parties. Further, the Court has granted Plaintiff the opportunity
13 to amend or voluntarily dismiss his complaint. ECF No. 6. If Plaintiff chooses to
14 file an amended complaint, it will be screened in due course, and if it is found to
15 state any cognizable claims against any defendants, the Court will order service on
16 the appropriate defendant(s), a responsive pleading will be filed, and the Court will
17 then issue an order opening discovery. Therefore, Plaintiff’s request for discovery,
18 ECF No. 12 at 1, is premature and is **DENIED** without prejudice.

19 **REQUESTS FOR ORAL ARGUMENT**

20 Plaintiff requests oral argument on his pending motions, claiming that his
21 pending motions “require some explanation[.]” ECF Nos. 13–14. He asserts that
22 his original Complaint consists of 76 pages, with more than 300 pages of
23 attachments. ECF No. 14 at 2. He expresses “concern that vital information and
24 supportive documents may not have been read and[/]or related to their 76 page
25 counter[.]part.” *Id.* Plaintiff asks to be afforded the opportunity to be present
26 virtually or telephonically before the Court “to provide essential information and
27 clarity of relations between complaint and filed exhibits.” *Id.* Plaintiff states that
28 “Changes (Big ones) will be made in the Amended Complaint,” but he seeks an

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1 opportunity to clarify and address any of the Court’s concerns. *Id.* at 2–3.

2 Plaintiff has been granted the opportunity to amend his complaint to correct
3 any deficiencies identified by the Court in its Order to Amend. ECF No. 6. In any
4 amended complaint, Plaintiff has the opportunity to “to provide essential
5 information and clarity of relations between complaint and filed exhibits.” ECF
6 No. 14 at 2. He has been instructed to limit any amended complaint to twenty-five
7 (25) pages. ECF No. 6 at 28–29. The Court finds oral argument is not warranted at
8 this time. Plaintiff’s requests for oral argument on his pending motions, ECF Nos.
9 13–14, are **DENIED**.

10 **MOTION FOR RECONSIDERATION**

11 On September 27, 2023, Plaintiff filed a Motion for Reconsideration of this
12 Court’s Order to Amend. ECF No. 15. Plaintiff takes issue with the Court’s
13 application of the three-year statute of limitations for Section 1983 claims under
14 Washington law and the Court’s determination that Plaintiff failed to allege
15 Defendant Dr. Harbour is a state actor. ECF No. 15 at 1–3. Plaintiff reasserts his
16 arguments from the Complaint that DOC Public Disclosures has refused to provide
17 records and that he was denied responses to his grievances so that he cannot
18 exhaust his administrative remedies. ECF No. 15 at 2–4.

19 A motion for reconsideration may be reviewed under either Federal Rule of
20 Civil Procedure Rule 59(e) (motion to alter or amend a judgment) or Rule 60(b)
21 (relief from judgment). *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5
22 F.3d 1255, 1262 (9th Cir. 1993). “A district court may properly reconsider its
23 decision if it ‘(1) is presented with newly discovered evidence, (2) committed clear
24 error or the initial decision was manifestly unjust, or (3) if there is an intervening
25 change in controlling law.’” *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th
26 Cir. 2013) (*quoting School Dist. No. 1J, Multnomah Cnty., Or.*, 5 F.3d at 1263).
27 “There may also be other, highly unusual, circumstances warranting
28 reconsideration.” *School Dist. No. 1J Multnomah Cnty., Or.*, 5 F.3d at 1263.

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1 **A. Statute of Limitations**

2 As noted in the Court’s Order to Amend, Plaintiff describes activities and
3 events in his Complaint that occurred from 2005 through the present. ECF No. 1 at
4 8–9, 32–36. The applicable statute of limitations for Section 1983 claims under
5 Washington law is three years. *See RK Ventures, Inc.*, 307 F.3d at 1058; *Millay v.*
6 *Cam*, 135 Wash.2d 193, 206 (1998) (requiring “bad faith, deception, or false
7 assurances by the defendant and the exercise of diligence by the plaintiff,” for
8 equitable tolling to apply). In its Order to Amend, the Court determined that
9 Plaintiff did not file his federal civil rights complaint until August 9, 2023, and in
10 the absence of a basis for equitable tolling, Plaintiff must limit his claims to those
11 which arose after August 9, 2020. ECF No. 6 at 17.

12 In his Motion for Reconsideration, Plaintiff states that although he agrees
13 with some of the Court’s Order to Amend and he will amend his complaint, he
14 argues that “[i]f the Court is going to use the Washington State Statute of
15 Limitations and the Tolling thereof, The Court cannot Ignore the continuing-
16 course-of-treatment-rule used by State Courts.” ECF No. 15 at 2. He argues that he
17 was deprived of medical care for more than eighteen years, and that the statute of
18 limitations was tolled under the Washington State “Continuing-Course-of-
19 Treatment Rule”, which applies “to cases where medical malpractice is alleged as a
20 result of continuing and substantially uninterrupted course of treatment.” *Id.* at 1.
21 He argues that allegations in his Complaint show that Defendants deprived him of
22 medical care from 2005 through 2023 and “[a]t NO time did [his] medical care
23 [he] complained of end and still continues to this day.” *Id.* at 2. Plaintiff asserts
24 that a cause of action exists for continuing negligent treatment and that this action
25 accrues when the treatment for the particular illness ended. *Id.* at 1.

26 As stated in the Court’s Order to Amend, a showing that a prison official has
27 been negligent or medically negligent is insufficient to establish a constitutional
28 deprivation under the Eighth Amendment. *See Hallett v. Morgan*, 296 F.3d 732,

1 744 (9th Cir. 2002) (“Mere medical malpractice does not constitute cruel and
2 unusual punishment.”) (citation omitted); *see also Wood v. Housewright*, 900 F.2d
3 1332, 1334 (9th Cir. 1990) (stating that even gross negligence is insufficient to
4 establish a constitutional violation); *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir.
5 1998) (finding no merit in claims stemming from alleged delays in administering
6 pain medication, treating broken nose and providing replacement crutch, because
7 claims did not amount to more than negligence); *McGuckin v. Smith*, 974 F.2d
8 1050, 1059 (9th Cir. 1992) (mere negligence in diagnosing or treating a medical
9 condition, without more, does not violate a prisoner’s Eighth Amendment rights),
10 *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136
11 (9th Cir. 1997); *Wood*, 900 F.2d at 1334 (holding that even gross negligence
12 cannot establish a constitutional violation).

13 Also as stated in the Court’s Order to Amend, Washington State’s three-year
14 statute of limitations for personal injury actions applies to Plaintiff’s Section 1983
15 claim. ECF No. 6 at 5, 17, 19. As stated in the Court’s Order to Amend, “[a]
16 federal claim accrues when the plaintiff knows or has reason to know of the injury
17 which is the basis of the action.” ECF No. 6 at 17 (citing *Bagley v. CMC Real Est.*
18 *Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (internal quotations omitted)); *see also*
19 *Gregg v. Hawaii, Dep’t of Pub. Safety*, 870 F.3d 883, 885 (9th Cir. 2017) (finding
20 an Eighth Amendment deliberate indifference claim accrued when plaintiff knew,
21 or had reason to know, through reasonable diligence, that her psychological
22 injuries were caused by defendants’ improper conduct in therapy).

23 In his Motion for Reconsideration, Plaintiff asserts that he submitted over
24 300 pages of documents in support of his allegations, but he is “unsure if the Court
25 has read these supportive documents.” ECF No. 15 at 2. He contends that these
26 documents show that Defendants Dr. Sawyer, Dr. Kenney, Dr. Edwards, and PA-C
27 Jackie Shuey “collectively for years DENIED plaintiff access to Orthopedic
28 Specialists which delayed care/treatment, for YEARS.” *Id.* Plaintiff argues that

1 each count set forth in his Complaint has its own list of exhibits in chronological
2 order and in the case of Plaintiff's torn labrum, the exhibits show in the physical
3 therapy evaluation from September 2010, that Plaintiff "suffered significant
4 deterioration which the defendants and CRC refused to act upon." *Id.*

5 Under the continuing course of treatment rule referenced by Plaintiff in his
6 Motion for Reconsideration, "the three-year statute of limitations begins to run
7 when the plaintiff discovers that the treatment has been negligent." *Martin v.*
8 *Washington State Dep't of Corr.*, No. C20-00311-LK, 2023 WL 3902363 (W.D.
9 Wash. May 1, 2023) (citing *Harris v. Extendicare Homes, Inc.*, 829 F. Supp. 2d
10 1023, 1030 (W.D. Wash. 2011)). "If, during the course of treatment, a patient
11 discovers the treatment has been negligent, the 3-year limitations period under
12 RCW 4.16.350 begins." *Id.* (citing *Caughell v. Group Health Co-op. of Puget*
13 *Sound*, 876 P.2d 898, 908 (Wash. 1994)). The limitations period begins to run
14 because "[t]he patient's discovery of facts sufficient to establish continuing
15 negligent treatment obligates the patient to take action from that moment on. This
16 discovery marks the end point of a claim for continuing negligent treatment."
17 *Caughell*, 876 P.2d at 908. Thus, Plaintiff's assertion that a cause of action for
18 continuing negligent treatment accrues when the treatment for the particular illness
19 ended is misplaced. ECF No. 15 at 1.

20 Moreover, Plaintiff is advised that he does not need to submit exhibits,
21 affidavits, grievances, kites, medical reports, or any other materials with his
22 complaint. Any documents Plaintiff chooses to submit must relate directly to the
23 claims presented in the complaint. Plaintiff must specify which portion of the
24 "exhibit(s)" (i.e., page and paragraph) he is relying on to support the specific
25 fact(s) of the claims presented in the complaint. The Court will not comb a
26 litigant's exhibits in search of a claim not clearly and concisely presented in the
27 complaint.

28 //

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1 **B. State Actor**

2 Plaintiff takes issue with the Court’s determination that he alleged no facts
3 in the Complaint from which the Court could infer that Defendant Dr. Chad
4 Harbour, a private party, conspired with state officials to deprive Plaintiff of his
5 constitutionally protected rights or otherwise acted under color of state law. ECF
6 No. 15 at 3; ECF No. 6 at 20. In his Motion for Reconsideration, Plaintiff alleges
7 that Defendant Dr. Harbour is a state actor acting under color of law. ECF No. 15
8 at 3. In any amended complaint, Plaintiff shall make this allegation.

9 **C. Responses to Grievances**

10 Plaintiff reasserts allegations from his Complaint that he was denied
11 responses to his grievances in order to prevent him from exhausting his
12 administrative remedies. ECF No. 15 at 3. He also argues that Defendant Austin
13 Frank’s “refusal to hand over critical records” has resulted in Plaintiff being unable
14 to make a case against Defendants and other unidentified individuals. ECF No. 15
15 at 3–4.

16 In his Motion for Reconsideration, Plaintiff presents no new facts,
17 information, or newly discovered evidence for the Court to consider in evaluating
18 his request. He has not shown that the Court committed clear error or that the
19 Court’s Order to Amend, ECF No. 6, was manifestly unjust. Furthermore, there has
20 been no intervening change in controlling law and there are no other circumstances
21 warranting reconsideration. Therefore, Plaintiff’s Motion for Reconsideration of
22 this Court’s Order to Amend, ECF No. 15, is **DENIED**.

23 **MOTION FOR EXTENSION OF TIME TO FILE FIRST AMENDED**
24 **COMPLAINT OR VOLUNTARY DISMISSAL**

25 On October 11, 2023, Plaintiff filed a Motion for Extension of Time to File
26 First Amended Complaint or Voluntary Dismissal. ECF No. 16. On September 21,
27 2023, this Court ordered Plaintiff to file a First Amended Complaint by November
28 20, 2023. ECF No. 6 at 29. Plaintiff was cautioned that if he failed to amend by

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1 that date, his complaint would be dismissed. *Id.*

2 Plaintiff requests that the Court grant him an extension of time between
3 thirty and sixty days to file a First Amended Complaint or to voluntarily dismiss
4 his complaint. ECF No. 16 at 1–2. He seeks an extension because he is a *pro se*
5 prisoner with limited resources and he has secured the assistance of attorneys who
6 will help draft his First Amended Complaint. *Id.* at 2. He asserts that an extension
7 of time would allow the attorneys to review the entire record and assist with
8 drafting an amended complaint. *Id.* at 3.

9 The decision to grant an extension of time is discretionary with the Court.
10 Fed. R. Civ. P. 6(b). Finding good cause, Plaintiff’s Motion for Extension of Time
11 to File First Amended Complaint or Voluntary Dismissal, ECF No. 16, is
12 **GRANTED**. Plaintiff may submit a First Amended Complaint or a Motion to
13 Voluntarily Dismiss his Complaint on or before **January 19, 2024**.

14 Accordingly, **IT IS ORDERED**:

15 1. Plaintiff’s requests to expedite all pending motions in this case and to
16 amend his complaint to include the events described in his letter, ECF No. 7 at 4,
17 are **DENIED as moot**. Plaintiff is cautioned that he may not bring a lawsuit with
18 respect to conditions of confinement under Section 1983 unless all available
19 administrative remedies have been exhausted. *Vaden v. Summerhill*, 449 F.3d
20 1047, 1050 (9th Cir. 2006); *Brown v. Valoff*, 422 F.3d 926, 934–35 (9th Cir. 2005).
21 Plaintiff should also be aware that claims arising in the Western District of
22 Washington should be brought in that District.

23 2. Plaintiff’s Motion to Appoint Counsel, ECF No. 8, is **DENIED**.

24 3. Plaintiff’s Motions for Preliminary Injunctions, ECF Nos. 9–12, are
25 **DENIED**.

26 4. Plaintiff’s request for discovery, ECF No. 12 at 1, is **DENIED**.

27 5. Plaintiff’s requests for oral argument on his pending motions, ECF
28 Nos. 13–14, are **DENIED**.

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1 6. Plaintiff's Motion for Reconsideration of this Court's Order to
2 Amend, ECF No. 15, is **DENIED**.

3 7. Plaintiff's Motion for Extension of Time to File First Amended
4 Complaint or Voluntary Dismissal, ECF No. 16, is **GRANTED**.

5 8. Plaintiff may submit an amended complaint on or before **January 19,**
6 **2024**, which must include sufficient facts to state a claim upon which relief may be
7 granted. Plaintiff is once again cautioned that if he fails to amend on or before
8 **January 19, 2024**, as directed, the Court will dismiss the complaint for failure to
9 state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

10 9. Alternatively, the Court will permit Plaintiff to voluntarily dismiss his
11 complaint pursuant to Federal Rule of Civil Procedure 41(a) on or before **January**
12 **19, 2024**, or risk dismissal under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2), and a
13 "strike" under 28 U.S.C. § 1915(g). A voluntary dismissal on or before January 19,
14 2024, will not count as a strike.

15 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
16 and provide a copy to Plaintiff, along with a form Motion to Voluntarily Dismiss
17 Complaint and a civil rights complaint form.

18 **DATED** this 9th day of November 2023.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

24 Stanley A. Bastian
25 Chief United States District Judge
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